

Honorable Robert J. Bryan

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

HELGA SANTOS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 07-5206-RJB

JOINT PRETRIAL ORDER

I. JURISDICTION

Plaintiff filed this suit under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2671 *et seq.*, which forms the jurisdictional basis of this action. Plaintiff filed an administrative claim with the Transportation and Security Administration (“TSA”) within two years of the events that are alleged in the operative complaint. She then filed this action within six months of TSA’s final administrative denial of her claim.

Venue is proper because Plaintiff resides within this judicial district.

II. CLAIMS AND DEFENSES

A. Plaintiffs will pursue at trial the following claims:

TSA was negligent when it searched Ms. Santos’ luggage during her flight from Berlin, Germany to Seattle, Washington. TSA’s negligence included opening numerous

1 packages of carefully wrapped heirloom china and failing to make any reasonable effort to
2 repackage the china, resulting in the breakage of the china. TSA was also negligent by
3 removing Ms. Santos' sweater, leaving only the purchase tag.

4 **B. Defendants' Affirmative Defenses/Claims:**

5 TSA's actions were not the cause of the broken china. Moreover, Plaintiff was
6 comparatively negligent, and is responsible for her loss. Plaintiff packed fragile china in soft-
7 sided suitcases that she checked with the airline for travel on three different planes through
8 four different airports. TSA repeatedly cautions travelers not to pack fragile items in their
9 checked baggage because of the risk of damage and/or loss.

10 **III. ADMITTED FACTS**

11 **A. The following facts are admitted by the parties:**

12 1. On March 29, 2006, Plaintiff Helga Santos flew to Berlin, Germany to attend to the
13 funeral and estate of her sister, who passed away unexpectedly.

14 2. As part of her inheritance from her sister, Ms. Santos received three sets of German
15 china. Ms. Santos also received a sweater that had belonged to her sister.

16 3. On April 11, 2006, Ms. Santos returned from Germany to her home in Graham,
17 Washington. She began her journey in Berlin, flying to Frankfurt. In Frankfurt, she changed
18 planes for a flight to Portland. In Portland, she changed planes and flew to Seattle.

19 4. Ms. Santos had packed the china and a sweater in two soft-sided suitcases that she
20 checked with the airline. Upon arriving home, Ms. Santos discovered that much of the china
21 had broken, and that the sweater was missing.

22 5. Ms. Santos filed an administrative claim with TSA. After investigation, Ms. Santos
23 stated that the value of her broken china was \$1,646.99. Her claim was denied.
24

B. The plaintiff contends as follows:

1. Ms. Santos telephoned Lufthasana Airlines before she left her sister's home to determine if she could check her china in her luggage. She was told that she could as long as she met the weight requirements and she packed the china appropriately.

2. Ms. Santos wrapped the china in three layers of protection and layered the packages between pieces of clothing in her luggage.

3. At the time of her flight from Germany to Washington State, Ms. Santos was disabled, unable to walk without difficulty, and used a wheelchair in the airport terminals.

4. At the Berlin Airport, she was assisted with the check-in of her luggage for the first leg of her flight to the United States. Once her luggage was checked, she did not see it again until her husband picked it up at the baggage carrousel at SeaTac Airport, Washington.

5. When she opened her luggage at her home, she saw a placard from TSA on the top of her belongings and opened packages of crushed china. Three packages of china were not opened and the pieces of china were in tact.

6. Ms. Santos' sweater was missing but the tag for the sweater was left in the bag.

7. Ms. Santos contacted a representative of Lufthansa Airlines who told her that the airline did not open luggage and that she should file a claim with TSA.

8. Her broken china was the result of TSA's negligent search of her luggage, opening the wrapped packages of china and TSA's negligence in not making any effort to rewrap the china.

9. Her sweater was negligently removed from her luggage, leaving only the tag behind.

10. The value of Ms. Santos' china of \$1,646.99 was not agreed on by Ms. Santos but was the value assigned to it by TSA.

C. The defendant contends as follows:

1. TSA would not have encountered Ms. Santos's bags until they arrived in Portland, Oregon, and did not encounter them at any other location.

2. By that time, German security personnel may have opened and inspected her bags.

3. Numerous baggage handlers not affiliated with TSA would have handled Ms. Santos's bags both before and after TSA encountered the bags.

4. The china easily could have broken, and the sweater removed from her suitcase, at a time prior to the bags reaching TSA. Similarly, these events could have occurred after the bags left the possession of TSA.

5. TSA repeatedly cautions travelers not to pack fragile items, like china, in their checked baggage because of the risk of breakage and/or loss.

6. Ms. Santos was negligent in packing the china in a soft-sided suitcase that she checked with the airline for travel on three different airplanes through four different airports.

IV. ISSUES OF LAW

A. Plaintiff's Statement of Legal Issues:

1. Under the Washington State law of negligence, was TSA negligent in failing to take reasonable care to rewrap Ms. Santos' china after its search of its contents and negligently removing her sweater.

2. Does Washington State law of bailment give TSA some responsibility for taking reasonable care of Ms. Santos' belongings during the search procedure.

3. Is TSA liable for the value of Ms. Santos' china in the amount of \$1,646.99.

B. Defendant's Statement of Legal Issues:

1. Can Plaintiff meet her burden of proof and establish that it was more likely than not that TSA's actions were cause of the broken china and the loss of her sweater?

2. Did TSA breach any duty of care owed to Plaintiff?

3. Is Plaintiff barred from recovering any amounts under the doctrine of comparative negligence and/or assumption of the risk?

V. EXPERT WITNESSES

No Expert Witnesses will testify for either party.

VI. OTHER WITNESSES

A. On behalf of plaintiffs:

1. Helga Santos
% Paula T. Olson
Burgess Fitzer, P.S.
1145 Broadway, Ste. 400
Tacoma, WA 98402
(253) 572-5324

Will testify concerning her trip to and from Berlin, Germany, her efforts at wrapping her china, her knowledge of TSA's search of her luggage, her administrative claim with TSA, and the value of her china.

2. Daniel Santos, Jr.
% Paula T. Olson
Burgess Fitzer, P.S.
1145 Broadway, Ste. 400
Tacoma, WA 98402
(253) 572-5324

Will testify concerning his actions in picking up his wife's luggage at SeaTac Airport and what he saw when she opened her luggage at home.

B. On behalf of defendant:

1. Blair Edwards
TSA Supervisory Transportation Security Officer
8338 NE Alderwood Road, Suite 200
Portland, OR 97220
(503) 250-1357

Mr. Edwards will testify about the various actors who would have handled and/or inspected Ms. Santos's baggage during her journey from Berlin to Seattle, including the role of TSA.

C. Rebuttal Witnesses:

Plaintiff does not intend to call any rebuttal witnesses.

VII. EXHIBITS**A. Plaintiff's Exhibits:**

No.	Description of exhibit	Admissible Stipulated	Authentic Stipulated/ Admissible Disputed	Admissible/ Authentic Disputed
1.	Sample of broken china set #1	X		
2.	Sample of broken china set #2	X		
3.	Sample of broken china set #3	X		
4.	Sample of unbroken china	X		
5.	Letter from Lufthansa Airlines to Ms. Santos dated April 28, 2006	X		

B. Defendants' Exhibits

No.	Description of Exhibit	Admissible Stipulated	Authentic Stipulated/ Admissible Disputed	Admissible/ Authentic Disputed
A-1	TSA Claims Management System Claims Overview pertaining to Ms. Santos's claim, dated July 5, 2007		X	
A-2	Ms. Santos's administrative claim, undated, with attachments	X		
A-3	Letter from Ms. Santos to TSA, dated July 26, 2006	X		
A-4	Letter from TSA to Ms. Santos, dated October 27, 2006, denying her administrative claim	X		
A-5	Ms. Santos's reconsideration request, dated November 2, 2006	X		
A-6	Letter from TSA to Ms. Santos, dated November 9, 2007, denying her reconsideration request	X		

BURGESS FITZER, P.S.

ATTORNEYS AT LAW

1145 BROADWAY STREET, SUITE 400
TACOMA, WASHINGTON 98402-3584
(253) 572-5324 FAX (253) 627-8928

No.	Description of Exhibit	Admissible Stipulated	Authentic Stipulated/ Admissible Disputed	Admissible/ Authentic Disputed
A-7	Collection of TSA notices and publications regarding fragile items		X	

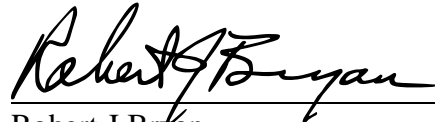
VIII. ACTION BY THE COURT

(a) This case is scheduled for a bench trial on May 5, 2007 at 9:30 a.m.

(b) Trial briefs shall be submitted to the court on or before April 25, 2008.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 25th day of April 2008.



Robert J Bryan
United States District Judge

FORM APPROVED:

By: _____

Paula T. Olson, WSB# 11485
BURGESS FITZER, P.S.
Attorney for Plaintiff Helga Santos

By: _____

Thomas M. Woods
Assistant U. S. Attorney
Attorneys for Defendant United States

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 22, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Paula T. Olson
E-mail: paulao@burgessfitzer.com

DATED this 22nd day of April, 2008.

s/Tracy H. Ung
TRACY H. UNG
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